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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SEP 25 2009

JAMES N. HATTEN, Clerk  
By: *J. White*  
Deputy Clerk

)  
DELTA AIR LINES, ) CIVIL ACTION NO.  
) 1:09-CV-2267  
Plaintiffs, )  
)  
v. )  
)  
MESA AIR GROUP, INC. and )  
FREEDOM AIRLINES, INC., )  
)  
Defendants. )

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**MESA AIR GROUP, INC.'S AND FREEDOM AIRLINES, INC.'S PARTIAL  
MOTION TO DISMISS COUNT I OF THE COMPLAINT**

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendants Mesa Air Group, Inc. (“Mesa Air”) and Freedom Airlines, Inc. (“Freedom”) (collectively, “Mesa”) respectfully move this Court to dismiss Count I of Delta Air Lines’ complaint. This action arises out of a contract between Mesa and Delta. Because the complaint does not contain factual matter sufficient to support the conclusion that the breach alleged by Delta is material, Count I of the Complaint -- which seeks a declaration of Delta’s right to terminate the agreement, and which relies on the element of materiality -- should be dismissed for failure to state a claim upon which relief can be granted. The complaint offers only “labels and conclusions”

regarding the conclusion of materiality, and provides just “a formulaic recitation of the elements of a cause of action” which, under recent decisions of the United States Supreme Court, “will not do.” *Ashcroft v. Iqbal*, \_\_ U.S. \_\_, 129 S. Ct. 1937, 1949 (2009) citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). As fully explained in the accompanying Memorandum of Law, under *Iqbal* and *Twombly* and New York’s law of materiality,<sup>1</sup> Delta has not and cannot allege facts sufficient to state a claim for the declaratory judgment requested in Count I. For these reasons, Count I should be dismissed.

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<sup>1</sup> The Agreement provides that it “is subject to, and will be governed by and interpreted in accordance with, the laws of the State of New York.” Art. 20(A).

Dated: September 25, 2009

Respectfully submitted,



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Attorneys for Defendants

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this manually filed a true and correct copy of the foregoing MESA AIR GROUP, INC.'S AND FREEDOM AIRLINES, INC.'S PARTIAL MOTION TO DISMISS COUNT I OF THE COMPLAINT, and have caused same to be served upon the following counsel of record by first-class mail:

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Dated: September 25, 2009.



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